THE

CASE

OF

Mrs. Mary Stout Widow.

IN *March* 1699. being within the ſpace of a Year after the ſuppoſed Murder of Mrs. *Sarah Stout*, a Writ of Appeal was ſued out of the High Court of *Chancery*, againſt *Spencer Cowper*, Eſq; *John Marſon*, *Ellis Stevens*, and *William Rogers*, Gent. in order for the Trial of them, at the Suit of one *Henry Stout*, Heir at Law to the Deceaſed, and the Appellant named in the Writ of Appeal, who at the time of Suing out ſuch Writ, was about the Age of Ten Years.

Mrs. *Stout*, the Mother of the deceaſed, after ſuch Appeal was ſued out, cauſed the ſame to be delivered to one Mr. *Boſtock Toller*, the Under-Sheriff for the County of *Hertford*, in order for his Apprehending of the Appellees mentioned in the ſaid Writ. And ſhe fearing, leſt he would be either Remiſs, or unmindful, in the due Execution thereof, ſome ſhort time after, ſhe ſent a Neighbour of hers to Mr. *Toller*, to know what he had done, or would do, with the Writ; whether he had Executed the ſame, or whether he would return the Parties were not to be found; which Meſſage was duely carried, with a particular account, That Mrs. *Mary Stout*, the Mother of the deceaſed, was the Perſon that ſent the ſame. To which Mr. *Toller* returned this anſwer, *Mrs.* Stout *is a very buſie, uneaſie Woman; but however, when the Writ is out, I will make ſuch Return thereof as the Law directs.*

Mrs. *Stout* having received ſuch an Anſwer, and expecting to have a Return of the Writ, according to Mr. *Toller*'s promiſe, on the 13th of *April* following, was in order thereto, and for the further deſigned Proſecution of the matter, duly admitted Guardian to the Appellant; and as ſuch, on the 15th of the ſame Month of *April*, being the firſt day of the then *Eaſter Term*, appeared Perſonally in the Court of King's Bench, in order to Arraign the Appellees, in caſe the Under-Sheriff ſhould have returned them taken.

Upon ſuch attendance of Mrs. *Stout*, Mr. *Toller* was frequently called, pending the whole time the Court ſate (the Writ being then Returnable) to make a Return of the Writ: *But* he made default, and inſtead thereof, Mr. *Marſon*, one of the Appellees appeared in Court, and prayed either to be Arraigned or Diſcharged: Tho' the Writ was not then, or ever ſince, ſeen or returned in Court; ſo that ſuch Mr. *Marſon*'s motion appearing only to be a Shew, or Bravado, no damage or advantage being to be ſuſtained or gained to him thereby; the ſame was rejected.

Upon the ſecond day of the ſame Term, the Court of King's Bench was moved on the behalf of Mrs. *Stout*, that a ſhort day might be appointed peremptorily for Mr. *Toller* to make his Return. But then (tho' Mr. *Marſon* knew of the Writ of Appeal's coming to Mr. *Toller*'s hand, as appears by his praying an Arraignment but the day before,) it was ſuggeſted in Court, That no Writ of Appeal was ever left

with Mr. *Toller*, againſt the Appellees: And upon ſuch Suggeſtion, Mrs. *Stout* then loſt the benefit of her Motion, and was forced the next day to get an Affidavit of the delivery of the Writ, which ſhe accordingly did; and thereupon ſhe moving again for a peremptory Return, then the Under-Sheriff's Receipt of the Writ of Appeal was granted, and thereupon a Rule of Court obtained to compel him to appear, and make a Return of the Writ; which Rule was ſerved, and thereupon Mr. *Toller* ſoon after attended, and by Affidavit informed the Court, That upon the 16th day of the ſame Month of *April*, (which was a day after the Return of the Writ, and three days after Mrs. *Mary Stout* was admitted Guardian to the Appellant) he delivered up the Writ into the Infant's Hand.

Upon which account given by Mr. *Toller*, the Court of King's Bench order'd him to be Examined upon Interrogatories, touching the delivery of the Writ; and accordingly Mrs. *Stout* the Guardian prepared the ſame, but could not without conſiderable Difficulty get him Examined, (being forced to be at the Charge of two or three Orders of Court, for that purpoſe, before he came.) At laſt his Examination was taken, in and by which he owns the Receipt of the Writ of Appeal; And that he was informed, That Mrs. *Mary Stout*, the Mother of the deceaſed, proſecuted the ſaid Writ, that ſhe ſent the ſame to him; and that the Infant, the Appellant, was a perfect Stranger to him, when he delivered it into his hands: But then, to extenuate the matter on his own behalf, the Reaſons he alledges in his Examination for ſuch his delivery, are, That the Appellant came with the Mother, Uncle, Aunt, and one Mr. *Wodford*, an old Acquaintance of his, for the Writ; and that Mr. *Wodford* informed him of the Reality of the Appellant, and his Relations; and delivered him a Note under the Hand of *William Cowper*, Eſq; purporting the ſame, That the Infant was the Plaintiff in the Appeal; that one of the Women was his Mother, and that the other Man and Woman his Uncle and Aunt; which, together with the ready Anſwers they gave to ſuch Queſtions as Mr. *Toller* asked them, induced him to believe them to be the real Parties; as in his Examination he ſets forth.

Mr. *Toller* ſays further, That on the 26th of the ſame Month of *April*, he deſired the Infant, his Mother, Uncle and Aunt, to deliver him back the Writ; but they declared, That the Infant with advice had burnt the ſame.

Mr. *Toller*, in his Examination, gives this account, That ſome ſhort time before his Receipt of the Writ, he received a Letter from Mr. *William Cowper*, to know whether any Writ of Appeal was come to his hands, againſt Mr. *Spencer Cowper*: To which he anſwer'd, there was none: That ſome ſhort time after ſuch Writ was come to his hands, he received another Letter from Mr. *William Cowper*, to the ſame effect of the former: To which Mr. *Toller* anſwered, There was; and ſent him the Contents of the ſaid Writ. That after ſuch Writ came to his hands, Mr. *Spencer Cowper* ſent him a Letter, to know whether he had received any Writ againſt him: To which Mr. *Toller* informed him, He had. So that by Mr. *Toller*'s own Examination, a perfect Correſpondence is owned; and an Intelligence from time to time, and from one party to another, is given.

That upon the laſt day of the ſame Term, Mr. *Toller*'s Examination was Reported to the Court of King's Bench; who, upon the hearing the ſame, were of opinion, That he was guilty of an high Miſdemeanour, and was in Contempt of that Court; and thereupon was committed to the *Marſhalſea*, and fined 200 Marks.

That Mrs. *Stout* having received no ſatisfaction for the Blood of her Daughter, by the Under-Sheriff's being ſo fined, did petition the now Lord Keeper for a New Writ; the time being elapſed then for the Suing out of another of Courſe; at which time alſo, there was a croſs Petition preferr'd in the Infant's Name, praying, That no new Writ of Appeal ſhould be Sued out in his Name. And the Subject Matter of both Petitions being debated before the now Lord Keeper, the Maſter of the Rolls, the late Lord Chief Juſtice *Treby*, the Lord Chief Baron *Ward*, and Mr. Juſtice *Powel*; upon ſuch Debate, it not then appearing by any poſitive Proof, that the Appellees in the Writ, nor any of them, were privy to the Deſtruction of the Writ: It was therefore thought hardly Reaſonable, that a New Writ ſhould be granted; which was a great Cauſe of Mrs. *Stout*'s Petition being rejected.

Now Mrs. *Stout*'s Petition was grounded purely upon another bottom, (ſhe not imagining that ſuch an Objection would have been ſtarted.) For ſhe was adviſed, that if Juſtice had been obſtructed, whether it had been by accident, or deſign, in either

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Cafe a ſuitable Remedy might have been found: As, ſuppoſing the Writ of Appeal had been accidentally burnt when in the Sheriff's Cuſtody, as it really was, when it was out, in reſpect to have a Diſcovery of Truth, the Court, which firſt gave the Writ (ſhe was adviſed by Counſel learned in the Law) could ſupply the loſs of it.

Had ſhe imagined, that all the Appellees would have ſo much as inſtanced their total Ignorance, as to the Deſtruction of the Writ, ſhe could have much better prepared her ſelf to have given them an Anſwer—She could have ſet forth how the Infant, his Mother, and the Appellees Atorney, went in a Coach with Four Horſes, to the Under-Sheriff at *Hertford*, and there took the Writ of Appeal from him, and from thence brought it to *London*: She could have informed the Court of a more particular Intelligence, lately confirmed, concerning the Deſtruction of the Writ, by whoſe Order, and at whoſe Chamber, the ſame was burnt: Which matters, if yet Examined, will ſufficiently Evince, whether the Appellees, or ſome one of them, were privy or not to the Deſtruction of the Writ.

There was an Objection againſt Mrs. *Stout*'s Petition, That the Writ of Appeal was never well Sued out, (the Infant nor his Mother, not knowing of the ſame till afterwards.) But to that, beſides the Proofs Mrs. *Stout* could have given to the contrary, ſhe was and is ſtill adviſed, That her being duly admitted Guardian, by the free Conſent of the Infant, (tho' ſubſequent in time to the Suing out of the Writ) the ſame in Law is very Authentick, and makes the ſame well ſued out. And it is preſumed, that no Perſon will ſay, That the Lord Keeper, and the other Judges did all agree to the contrary, upon debate of the Matters before them.

It was mightily inſiſted upon by the Counſel for the Appellees, at the hearing of both Petitions, as if Mrs. *Stout* ſhould cauſe her ſelf to be admitted Guardian to the Infant, only to protect her Eſtate from the Infant, and that without the privity of the Infants Mother, or any of his Relations: But (beſides the very Admittance it ſelf, which is purely for Proſecuting the Appeal, and for nothing elſe) Mrs. *Stout* was always ready to diſcover the Title of her Eſtate; and never but declared, That the Infant had no right thereto. And as to the Infant's Mother's not knowing of Mrs. *Stout*'s Deſigns, it is very eaſily anſwered, for it is not only Sworn, and the Affidavits filed in the *Kings-Bench*, That Mrs. *Stout* wrote to the Infant's Mother, what her Deſigns were: But alſo, a particular Account is in thoſe Affidavits ſet forth, How willing the Infant's Mother was to ſend her Son to Mrs. *Stout*, Ordering one of his Uncles to carry him to her, for Mrs. *Stout* to do with him as her Occaſions required; and withal directing ſuch Uncle to deliver her Son to Mrs. *Stout*, and to none but her, and to do according to her Directions.

It hath commonly been Reported, as if the Proſecution in this Appeal, hath been purely Vexatious, Begun by a Body of *Quakers*, and Eſpouſed by a Faction at *Hertford*, againſt Mr. *Cowper*'s Intereſt. But whoever the Fomenters, or Spreaders abroad of ſuch Reports are, they would do well to conſider, if it were their own Caſe, to have an only Child murthered, and her Reputation rendered Infamous to Poſterity, whether Nature and Duty would not oblige them to uſe all means to make a Diſcovery of the Cauſe thereof? And whether they would not think it hard, to have their own Endeavours reflected on, and their utmoſt Diligence accounted to be the Cauſe of a Party?

It hath alſo been Reported, and perhaps by ſome of the Appellees may be objected, That the very Method, in the Proceſs of this Appeal, Hath been Malicious, in delaying the Suing out of the Writ, until the time was almoſt Elapſed, thereby to keep the Appellees in an uneaſie Suſpence. But in Anſwer to that, 'tis confeſſed, That it was much longer before the Writ of Appeal was Sued out, than was deſired or expected; becauſe it was near half a Year before Mrs. *Stout* could find out (tho' all that while ſhe made a diligent Search) the proper Perſon to make an Appellant; and after ſhe had, ſhe was forced to Examine moſt of the Regiſters in *London* and *Southwark*, to make out his Pedigree; and which as ſoon as ſhe had done, the very next day ſhe cauſed the Writ of Appeal to be Sued out; ſo that it was her Miſ-fortune, and not her Malice, in being under the neceſſity of ſo long a delay.

It is commonly urged, as a ſtrong Argument, againſt a ſecond Trial of the Appellees, That there is no new Evidence, that Mrs. *Stout* hath againſt them, but

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ſuch Perſons, whoever they are, not only Aſſert, What they are totally Ignorant of, but alſo Conclude, that Mrs. *Stout* takes a great deal of Pleaſure (eſpecially now, in her Old Age) in being in a conſtant Fatigue, and conſiderable Expence, purely to be rendred Ridiculous to the World, and Uneaſie to her Self, in the freſh and daily Renewals of her great Loſs. In Anſwer to which, She is ſufficiently Aſſured, That She Goes and Acts by other Principles and Deſigns; and that ſhe hath more Material Evidence than ever yet was made Publick; and that She believes the Appellees (tho' they pretend their Innocency is fenced providentially with ſuch Circumſtances, as that they need not fear) do not care to come to the Teſt; or elſe, Why ſhould there be ſo vigorous an Oppoſition againſt ſo plain an Act of Juſtice, if there was no Matter of Fact, that could be proved againſt them, nor no concurring Circumſtances, that would any way affect them (as they ſeem to Inſinuate?) It would have Redounded much more to their Honour and Reputation, and have wiped off all Occaſion of Reproach, if (inſtead of ſo mean an undermining of Juſtice, in the Deſtruction of the Writ of Appeal) they had undergone a Second Trial; It being impoſſible (according to their own Aſſertions) for them to Miſcarry, or be found Guilty; All Perſons muſt certainly know, That it would be no Prudence in Mrs. *Stout*, to Divulge her Evidence before a Trial; and if She doth but act Prudently, for any therefore to alledge, She hath no Proof, is purely to ſpeak at Random and at a Venture, and ought to be regarded accordingly.

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